IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

OP.No. 37035 of 2002(H)

PETITIONER:

M/S. COOKIES (INDIA) PVT.LTD.,
REPRESENTED BY ITS DIRECTOR
K.T. ACHUTHAN S/O. KRISHNAN KUTTY MENON,
AGED 47, RESIDING AT KOTTAYIL HOUSE,
CHIYYARAM P.O., TRICHUR-26.

BY ADV. SRI.P.F.THOMAS (SR.)
SMT.A.K.RANI
SRI.RAYNOLD FERNANDEZ
SRISHIJU VARGHEESE
SRI.GOPAKUMAR.G.

RESPONDENTS:
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1. GENERAL SECRETARY, VANIJYA VYAVASAYA
MAZDOOR SANGH (BMS), VIVEKANANDA ROAD,
TRICHUR DISTRICT.

2. INDUSTRIAL TRIBUNAL, PALAKKAD.

BY ADV. SRI.N.NAGARESH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP(C) NO.37035 OF 2002)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of the reference order dtd.28.9.96.

Ext.P2: Copy of the written statement in ID No.81/96 dtd.10.5.97.

Ext.P3: Copy of the petition in MP No.113/1999 in ID No.81/96 dtd.6.9.99.

Ext.P4: Copy of the award in I.D.No.81/96 dtd.26.10.99.

RESPONDENTS' EXHIBITS:

Ext.R1(a): Copy of the Enquiry Report dtd.12.10.93.

Ext.R1(b): Copy of the Claim statement filed by the Union on 31.3.97.

Ext.R1(c): Copy of the Rejoinder dtd.3.10.97.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

O.P.NO. 37035 OF 2002 - H

Dated this the 10th day of August, 2007

J U D G M E N T

This original petition is at the instance of the management in I.D.No.81 of 1996 on the files of the Industrial Tribunal, Palakkad, who challenges Ext.P4 award passed by the Tribunal in that I.D. The issue referred for adjudication was the justifiability of the dismissal of Sri.K.Radhakrishnan from the service of the petitioner/management. Since the management took a contention that the dismissal was after conducting a domestic enquiry, the Tribunal considered the validity of the enquiry as a preliminary point, and found that the enquiry is vitiated for want of compliance of the principles of natural justice as also for want of sufficient evidence to support the findings. In the written statement filed by the management, there was no prayer for permission to adduce evidence to prove the mis-conduct alleged against the workman. After the passing of preliminary order, the counsel for the management

made an oral request for adducing fresh evidence to prove the charge against the workman. That also was considered and rejected. Resultantly, the Tribunal passed Ext.P4 award holding that the dismissal of Sri.K.Radhakrishnan from service is unjustifiable and that he is entitled to the relief of the reinstatement in service with all consequential benefits including back wages. This award is under challenge before me.

2. The contention of the management that the finding that the domestic enquiry is vitiated is unsustainable. They would contest the finding that the domestic enquiry was conducted in violation of principles of natural justice. They would also contest the finding that there is no sufficient evidence in the enquiry to find the workman guilty. They would also challenge the view of the Tribunal that the oral request made by the counsel for passing fresh evidence is not sufficient for granting permission to adduce fresh

evidence in support of the mis-conduct.

3. I have considered the contentions in detail. From a reading of Ext.P4 award, I find that the Tribunal had entered the following findings:-

The enquiry was conducted against five workmen jointly. The workmen were given notice dated 30.9.1993 informing them that the enquiry would be conducted on 9.10.1993 at 11 a.m. One workman participated in the enquiry and the other four were ex parte. According to the Union representing the workmen, the four workmen submitted Ext.W3 letter dated 8.10.1993 requesting the management and the Enquiry Officer to adjourn the enquiry to some other date to enable them to discuss the matter with the Union. The Union gave evidence to the effect that Ext.W3 letter dated 8.10.1993 was handed over to the management as well as the Enquiry Officer. The management did not adduce any contra evidence.

Therefore, believing the evidence tendered by the Union, the Tribunal came to the finding that the delinquent workmen represented before the management and the Enquiry Officer, either on 9.10.1993 or thereafter on 14.10.1993, to adjourn the enquiry and the enquiry report is dated 12.10.1993.

On this finding, the Tribunal held that the domestic enquiry has been conducted in haste without complying with the principles of natural justice.

4. Thereafter, the Tribunal considered the evidence available in the enquiry to see whether the findings of the Enquiry Officer are supported by evidence. After extracting the charges and extracts from the evidence of the management witness in the enquiry, the Tribunal came to the conclusion that the management had only succeeded in proving some suspicious circumstances against the workman, which cannot take the place of legal evidence and therefore,

the management has not succeeded in proving the guilt of the workman.

5. The Tribunal rejected the prayer for permission to adduce fresh evidence on the ground that it is settled law that such prayer should have been made in the written statement of the management itself.

6. Regarding the first point, the contention of the management is that the workman did not submit any request for adjournment as claimed by him. This contention does not appeal to me since the Tribunal has, on the basis of evidence available, which evidence was not controverted by the management, come to the finding that the management had totally ignored Ext.W3 letter and issued the dismissal order in haste. This is a pure question of fact on the basis of evidence. From a reading of the award of the Tribunal, I do not find any perversity in that finding, on finding of which alone I can interfere with the same in exercise of jurisdiction

under Article 226 of the Constitution of India.

7. The very same conclusion applies to the decision on merits regarding the availability of evidence to support the allegations of misconduct. The Tribunal had reappreciated the evidence in detail and had come to the conclusion that even, according to the management witness, he only suspected the involvement of the workman in the misconduct committed by others. In fact, the Enquiry Officer himself had categorically held that it has not been proved that the workman had in fact committed misconducts. As I had already stated, this also is in the realm of appreciation of evidence. I could not find anything perverse in the findings so entered by the Industrial Tribunal.

8. The above being so, I cannot find fault with the conclusion of the Tribunal that the enquiry was vitiated for the above said reasons.

9. The next question is as to whether the management should have been given fresh opportunity to adduce evidence on the oral request of counsel for the management after the preliminary order. I need not go into this question in detail, since I myself had occasion to consider the very same question, on the basis of the Supreme Court decisions on the subject, in the decision reported in **Edayar Ksheerolpadaka Sahakarana Sangham** v. **Industrial Tribunal** (2007 (2) KLT 613), in which I had categorically held that unless the management raises the plea in the written statement itself, they are not entitled to such an opportunity. In view of my above findings, I do find any merit in the original petition and the same is dismissed.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J.

O.P.NO.37035 OF 2002

J U D G M E N T

DATED:10-08-2007